**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-10412-jlg

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In the Matter of:

DITECH HOLDING CORPORATION,

Debtor.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

May 17, 2019

3:37 PM

B E F O R E :

HON JAMES L. GARRITY

U.S. BANKRUPTCY JUDGE

ECRO: KAREN

HEARING re 1) Motion to Disband Committee (Doc #522)

HEARING re Statement of the Motion of Debtors for Entry of an Order (I) Disbanding the Official Committee of Consumer Creditors Appointed by the U.S. Trustee or, Alternatively, (II) Limiting the Scope of Such Committee and Capping the Fees and Expenses Which May be Incurred by Such Committee (Doc #529)

HEARING re Objection of the Official Committee of Consumer Creditors (Doc #548)

HEARING re Declaration of Victor Noskov in Support of the Official Committee of Consumer Creditors' Objection to the Debtors' Motion (Doc #549)

HEARING re Objection of the United States Trustee to the Motion of the Debtors for Entry of an Order Disbanding the Official Committee of Consumer Creditors (Doc #556)

HEARING re Opposition to Debtors' Motion to Disband the Consumer Creditors' Committee filed by Wayne M. Greenwald on behalf of Monique Scranton & 800 Consumer Creditors (Doc #560)

HEARING re The Diamond Victims' Joinder in Objection to Debtors' Motion to Disband Consumer Creditors Committee (Doc #561) continued from 5/14/2019

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

QUINN EMANUEL URQUHART & SULLIVAN LLP

Attorneys for the Consumer Creditors Committee

51 Madison Avenue, 22nd Floor

New York, NY 10010

BY: BENJAMIN I. FINESTONE

VICTOR NOSKOV

P R O C E E D I N G S

THE COURT: All right. I apologize for the delay in our start. This is the Ditech Holding Corp., Case No. 19-10412. This is the adjourned hearing on the Debtors' motion for an order seeking to disband the Official Committee of Consumer Creditors. We heard argument and other matters on May 14th and adjourned the matter to today. And I will issue my decision now.

The matter before the Court is the Debtors' motion to an order pursuant to Sections 105(a) and 1102(a) of the Bankruptcy Code, one, disbanding the Official Committee of Consumer Creditors, which I'll refer to as the "Consumer Creditors Committee," appointed by the United States Trustee or alternatively, two, if the Court determines not to disband the Consumer Creditors' Committee, limiting such committee's scope solely to the treatment of consumer borrower claims under the plan or a sale transaction and capping the fees and expenses which may be incurred by such committee and its, excuse me, professionals to $250,000 in the aggregate.

The motion is supported by the Ad Hoc Term Loan Group which is a term defined below. See ECF Number 529. The following parties oppose the motion: the U.S. Trustee; the Consumer Creditors Committee; approximately 800 consumer creditors represented by the firm of Wayne Greenwald, P.C.

-- I'll refer to them as "the Scranton Consumers;" Milan Harris, individually and not in his capacity as a member of the Consumer Creditors Committee; together with five other consumers who assert that they are victims of a reverse mortgage fraud scheme. See ECF Numbers 548, 556, 560, and 561.

The Official Committee of Unsecured Creditors did not file a response to the motion.

Just one moment, please. If you have dialed in, if you'd please mute your phone. We're hearing some background noise. Thanks very much.

(Pause)

THE COURT: We'll try it one more time. If you're on the phone, mute it please. If you have a live line, especially mute it. Thank you.

The Court held a hearing on the motion on May 14, 2019. For the reasons discussed below, the motion is denied. The Court has jurisdiction of the motion pursuant to 28 U.S.C. Sections 1334(a) and 157(a) and the Amended Standing Order of Referral of Cases of Bankruptcy Judges of the United States District Court For the Southern District of New York dated January 31, 2012, Preska as chief judge. This matter is a core proceeding under 28 U.S.C. Section 157(b)(2).

The facts are as follows. On February 11, 2019,

each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this court. Since that date, the Debtors have remained in possession and control of their business and assets as Debtors In Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtors along with their non-debtor subsidiaries, which I'll collectively refer to as "the Company" operate as an independent servicer originator of mortgage loans and servicer of reverse mortgage loans. See the declaration of Gerald A. Lombardo pursuant to Rule 1007-2 of Local Bankruptcy Rule for the Southern District of New York, ECF Number 2. That's the Lombardo Rule 1007 declaration at Paragraph 6.

The company originates and purchases residential loans through consumer correspondent and wholesale lending channels that are predominantly sold to the Federal National Mortgage Association or Fannie Mae and the Federal Home Loan Mortgage Corporation, also known as Freddie Mac, and government entities. Fannie Mae and Freddie Mac are government-sponsored enterprises, each a GSC and collectively the GSEs. It's ordered by Congress that by and securitized mortgage loans originated by mortgage lenders. See the Lombardo Rule 1007 declaration at Paragraph 6, 20, and 25, Note 3.

The Company's business is comprised of three

primary segments, one, forward mortgage originations; two, forward mortgage servicing; and three, reverse mortgage servicing. That's the declaration at 24, Paragraph 24.

The Company's forward mortgage originations are done exclusively through Debtor Ditech Financial, LLC., which I'll refer to as "Ditech." Virtually all of the loans that Ditech originates are conventional conforming loans eligible for securitization by GSEs. In 2018, Ditech originated or purchased over $12.6 billion in mortgage loans. See the declaration at Paragraphs 25 and 27.

Ditech also performs mortgage service -- excuse me, also performs forward mortgage loan servicing for mortgage loans for which Ditech owns the mortgage servicing rights and subservicing for third party owners of mortgage servicing rights. See the declaration at Paragraph 38. As of the year-end of 2018, Ditech serviced approximately 1.4 million residential loans with an unpaid principal balance of $176.1 billion. And of those, Ditech was the subservicer for $700,000 accounts with an unpaid principal balance of $104.3 billion. See the declaration at Paragraph 39.

Debtor Reverse Mortgage Solutions, Inc., or RMS, primarily focuses on servicing and subservicing reverse mortgage loans, the majority of which are home equity conversion mortgages or HECMs that are insured by the Federal Housing Administration. An HECM is a loan that

allows home owners to borrow money against the equity value of their homes. See the declaration at Paragraph 40.

A reverse mortgage borrower typically is not required to remit monthly mortgage payments but instead receives cash in monthly installments, a lump sum, or a line of credit up to a principal limit, which limit is calculated on among other things the age of the borrower, the appraised value of the borrower's home, and the loan interest rate. See the declaration at Paragraph 41.

An HECM borrower must be age 62 or over and typically relies on the proceeds of the loan -- of such loan to fund their living expenses. The average age of the borrowers under the HECMs in RMS's portfolio was approximately 75 years of age. See the declaration at Paragraph 41.

Reverse mortgage loan servicing accounts for approximately 13 percent of the Debtors' revenue. See the declaration at 40, Paragraph 42. RMS performs servicing for mortgage loans that fall into two categories: one, mortgage loans that RMS owns or owns the mortgage servicing rights and, two, mortgage loans for which RMS performs servicing and subservicing for third-party owners of the loans. That's the declaration at 42. As of December 31, 2018, RMS serviced or subserviced approximately 88,000 loans with an unpaid principal balance of $17.1 billion. See the

declaration at Paragraph 44.

As of the petition date and without limitation, the Debtors had outstanding debt obligations in the principal amount of approximately $961.4 million relating to certain terms loans. Those are the 1 L term loans. And the lenders thereunder are the 1 L term lenders. The 1 L terms loans are secured by a first lien basis -- on a first-lien basis by substantially all of the Debtors' assets. Refer to that as the 1 L collateral.

The Debtors also have outstanding note obligations in the principal amount of $253.9 million as of the petition date relating to certain notes, refer to those as the 2 L notes, which are secured on a second-lien basis on the 1 L collateral. See the declaration at Paragraphs 48 to 49.

As of the petition date, the Debtors were servicing approximately 1.5 million loans made to individuals -- I'll refer to them as "the Consumer Borrowers" -- and that were secured by forward and reverse mortgages on their residences. The Debtors acknowledge that at this time RMS is party to approximately 6,000 judicial and non-judicial foreclosure proceedings and more than 600 eviction proceedings and that Ditech is party to 16,400 judicial and non-judicial foreclosure proceedings and approximately 350 eviction proceedings. See documents filed at ECF Numbers 9 at Paragraph 75 and Number 10 at Paragraph

61.

It's undisputed that in many of the judicial and non-judicial foreclosure proceedings, the Consumer Borrowers are asserting claims and defenses to foreclosure including claims against RMS and Ditech. In addition, apart from the foreclosure-related litigation, Consumer Borrowers have sued RMS and Ditech on account of their alleged illegal and fraudulent loan origination, servicing, and accounting practices.

In very general terms, those consumer creditor claims fall into two categories. One consists of claims, crossclaims, third-party claims, and counterclaims that do not result in any ordered judgment, verdict, decree, or arbitration award of monetary damages including without limitation attorney's fees or costs, penalties, or fines including statutory penalties and fines against the Debtors but that are necessary to resolve, one, a claim or defense involving the amount, validity, priority of liens with respect to the property subject to the mortgages; two, a claim or defense that is subject to Section 363(o) of the Bankruptcy Code; three, alleged servicing errors involving the misapplication or payment or miscalculation of amounts due and owing; or four, a claim or defense brought by a consumer borrower on account of the Debtors' alleged pre-petition failure to, among other things, comply with the

loan modification obligations and the improper assignment of deeds of trust.

I'll refer to those types of claims as non-monetary claims. The other type of claims asserted by Consumer Borrowers against the Debtors in the foreclosure actions and otherwise consist of claims, crossclaims, third-party claims, and counter claims that result in orders, judgments, verdicts, decrees, or arbitration awards of money damages including attorney's fees, costs, and statutory and non-statutory penalties and fines. I'll refer to those claims as monetary damage claims.

As of the petition date, the Debtors were party to thousands of actions involving Consumer Borrowers, asserting consumer creditor claims which include non-monetary claims and/or money damages claims against the Debtors. The Debtors explain that in recent years, their business has been impacted by significant operational challenges and industry trends that have severely constrained their liquidity and ability to implement needed operational initiatives.

To address the burden of its over-leveraged capital structure, Walter Investment Management Company, which is now known as Ditech Holding Corp. which is the Debtor herein, consummated a fully-consensual pre-packaged Chapter 11 plan on February 8, 2018. See the Lombardo

declaration at Paragraph 7. However, even as of the effective date of Walter's Chapter 11 plan, the company was facing significant liquidity and operational headwinds, and the company's new senior management team determined that additional relief was needed.

In June 2018, the company began a formal review of strategic alternatives including a potential merger or sale of all or substantially all of the assets of the company. I'll refer to that as the pre-petition marketing process. The company, however, has not been able to consummate an out-of-court transaction with a third-party purchaser. See the Lombardo declaration at Paragraph 69.

By May 2019, the company turned its focus toward planning for an in-court recapitalization transaction that would maximize value for its creditors and preserve the enterprise as a going concern. See the declaration at Paragraph 8. To that end, in December of 2018, the company began in earnest negotiating with groups of holders of its corporate debt on an acceptable recapitalization structure culminating in a restructuring support agreement with the Ad Hoc Group of Term Lenders, which I'll refer to as "the Ad Hoc Term Loan Group" holding in the aggregate approximately $736.6 million of the 1 L term loans. I'll refer to that agreement as "the Restructuring Support Agreement" or the RSA.

Among other things in the RSA, the Debtors agreed to commence these Chapter 11 cases and to propose a joint reorganization plan that provides for a transaction -- refer to that as "the Reorganization Transaction" -- pursuant to which the Debtors would equitize a portion of the 1 L term loans and extinguish certain other debt. In pertinent part, the Reorganization Transaction calls for a debt-to-equity swap of 1 L term loans which would lead the 1 L term lenders with 100 percent of the equity of the reorganization company and $400 million of first lien debt; an unspecified distribution in cash to holders of so-called go-forward trade claims, that is trade creditors that the company identified with the consent of 1 L term lenders as being integral to the reorganized company; and the extinguishment of the 2 L notes and all remaining general unsecured claims including all consumer borrower claims for no consideration. See the declaration at Paragraph 9.

The RSA also provides that as a toggle to the Reorganization Transaction, the Debtors would continue the pre-petition marketing process to pursue a sale of all or substantially all of their assets with the sale proceeds being distributed to creditors, which we'll refer to as the sale transaction, and alternatively, a smaller asset transaction that could complement a Reorganization Transaction.

In the event of a sale after payment of administrative claims, priority claims, and satisfaction of certain unimpaired -- excuse me, certain unimpaired secured claims, the proceeds would be distributed pursuant to a waterfall as follows: first to the holders of 1 L term loans, second to the holders of 2 L notes, and third to the holders of general unsecured claims including the claims of the consumer borrowers and go-forward trade claims.

The toggle decision of whether to effectuate a Reorganization Transaction or sale transaction would be at the election of a super majority that is 66 and two-third percent of the 1 L term lenders. On March 5, 2019, the Debtors filed a joint plan of reorganization and a disclosure statement in support of it. The plan was faithful to the RSA with certain exceptions not relevant here and proposed a toggle Chapter 11 plan. In the disclosure statement, the Debtors projected that in a sale transaction, unsecured creditors including Consumer Borrowers would receive no distribution on account of their claims and that those claims would be discharged in bankruptcy.

On February 27, 2019, the U.S. Trustee appointed the Creditors Committee. At that time, it consisted of seven members comprised of two trade creditors, two general unsecured creditors, the indentured trustee for the 2 L

notes and the indenture trustee for certain RMBS trusts, and one Consumer Borrower holding a liquidated litigation claim. Promptly thereafter, the Creditors Committee retained bankruptcy and specialty industry counsel and financial advisors.

The Committee's bankruptcy counsel explained that its mandate from the Committee from the outset of its retention has been to work with the Debtors and 1 L lenders towards maximizing the recovery for general unsecured creditors under the plan noting that, as filed, the plan provided for no distribution on account of those claims.

In line with that mandate, on April 4, 2019, the Creditors Committee filed an objection to the disclosure statement. The Committee objected to the adequacy of the information contained in the disclosure statement and the solicitation and voting procedures. It also contended that the disclosure statement should not be approved because the plan was patently unconfirmable. Among other things, the Creditors Committee argued that the plan violated the best interest of creditors test, the absolute priority rule, and unfairly discriminated between go-forward trade creditors and general unsecured creditors.

The Committee also argued that any sale contemplated by the plan must incorporate Section 363(o) of the Bankruptcy Code. That section provides that

notwithstanding (f) if a person purchases any interest in a consumer credit transaction that is subject to the Truth In Lending Act or any interest in a consumer creditor contract as defined in Section 433.1 of Title 16 of the Code of Federal Regulations January 1, 2004 as amended from time to time, and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer creditor transaction or such consumer creditor contract to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section. See 11 U.S.C. Section 363(o).

Without limitation, the Debtors contend that any sale that will be effectuated through the plan that the -- excuse me. Without limitation, the Debtors contend that any sale of the assets in this case will be effectuated through a plan and, therefore, will not implicate Section 363(o). The U.S. Trustee objected to the disclosure statement. Without limitation, it asserted that the provisions in Section 363(o) are -- or excuse me, are applicable both in a sale and reorganization transaction. Various consumer borrowers also objected to the disclosure statement.

On or about April 26, 2019, the Debtors filed a revised plan and disclosure statement. As relevant here,

the second amended plan added a creditor class of borrower nondischarged claims. In essence, that class consists of consumer borrowers holding non-monetary claims. Under that plan in a reorganization transaction, the holders of borrower non-discharged claims receive no distribution on account of their claims but those claims are accepted from discharge. Thus, in such a transaction, the borrower non-discharged claims would patch through the plan and be enforceable against the reorganized debtor.

The balance of the consumer creditor claims including the money damage claims would be classified with general unsecured claims and be discharged in bankruptcy. In the event of a sale transaction, the plan calls for the borrower nondischarged claims to be treated as general unsecured claims and paid through a claims waterfall and discharged in bankruptcy. As with the initial plan, the Debtors projected that under a sale transaction, unsecured creditors will receive no distribution on account of their claims.

On April 26th, the Debtors filed an application to further extend the bar date solely for consumer creditors. That application was filed partly in response to "numerous inquiries from consumer borrowers unfamiliar with the Chapter 11 process regarding filing proofs of claim." The Debtors recognize that "such consumer borrowers are

typically not sophisticated and are not represented by counsel." The Court granted the application.

After they appointed a Creditors Committee, the U.S. Trustee received several letters from various representatives of Consumer Borrowers requesting the appointment of a Consumer Creditors Committee. The first such letter is dated April 8, 2019, and was sent by Thad Bartholow on behalf of certain individual Consumer Borrowers. As the April letter indicates, Mr. Bartholow's request for the appointment of an additional committee was supported by eleven counsel representing a number of Consumer Borrowers. And a number of those counsel were acting on behalf of various pro bono organizations as, for example, the National Consumer Law Center and the Legal Assistance Foundation.

That letter was followed by two letters from the Connecticut Fair Housing Center dated April 12th, 2019. Victor Noskov of the Quinn Emanuel Law Firm which is the proposed counsel to the Consumer Creditors Committee authored one of those letters as pro bono counsel for the Connecticut Fair Housing Center and certain individual reverse mortgage borrowers.

Atlanta Legal Aid sent a letter to the U.S. Trustee dated April 5, 2010, and J. Samuel Tenenbaum at the Northwestern University School of Law Investor Protection

Center sent a letter to the U.S. Trustee dated April 19, 2019. All of those letters requested the appointment of a Consumer Creditors Committee for the benefit of their clients.

The issues raised in Mr. Bartholow's letter are representative of those raised by the other creditors in support of their requests for the appointment of a Consumer Creditors Committee. In part, that letter states as follows:

"We are submitting this request to you because our consumer creditor constituents, none of whom chose to do business with the Debtors, are the most vulnerable and have the lease financial liens available to them of all the Debtors' creditors. Moreover, the Debtors' plan provisions threaten substantial harm to our constituents insofar as the Debtors seek to use their plan discharge and/or eliminate consumer creditors' challenges to illegally assessed charges Debtors added to consumer accounts and other improper loan servicing and accounting practices which have caused consumer creditors' accounts to be overstated and inaccurate.

"It's our understanding that the Debtors' illegal accounting practices have already caused some

consumer creditors to lose their homes. If Ditech succeeds in confirming a plan that leaves consumer creditors without any meaningful and enforceable remedies, this bankruptcy will cause yet more consumer borrowers to unfairly and unlawfully be deprived of their homes. Debtors' improper loan servicing and accounting practices also cause significant harm to the consumer borrowers' credit which harm will be all but impossible to prevent if consumers' statutory enforcement rights under the Fair Credit Reporting Act are eliminated by plan confirmation and/or discharge in this case.

"Perhaps, most perversely, Debtors' efforts to collect these illegal amounts violates the borrowers' discharge injunctions entered by bankruptcy courts around the nation in borrowers' Chapter 13 cases. As this Court is well aware, Chapter 13 debtors work hard making bankruptcy payments up to five years before they earn their Chapter 13 discharges.

"By contrast, in this Chapter 11 case, Debtors are attempting to obtain a discharge injunction in a matter of months that would immunize them and their successors in interest, pardon me, for past and future violations of their consumer borrowers'

prior discharge injunctions.

"Further, violations of the borrowers' discharge injunctions will inevitably result as a result of the amended plan and its pre-petition disclosure statement are conspicuously devoid of any proposal that would address Debtors' improper pre-petition loan servicing and accounting practices.

"Establishing an official Consumer Creditors Committee for this case and/or making substantial changes to the composition of the membership of the Official Unsecured Creditors Committee in this case is, therefore, critical not just to protect the Consumer Creditors' interest but also to educate the Court and all legitimate creditors regarding Debtors' servicing and accounting practices. In order to properly assess the value of the Debtors' assets, the stakeholders need to determine the effect of the Debtors' improper servicing and accounting practices on the Debtors' financials in the extent that Debtors'/Defendants' servicing portfolios are infested with improper charges and fees that are not factored into the official -- into the financial disclosures by the Debtor in this case."

That's the Bartholow letter at Pages 2 to 3.

In response to those letters, on April 22nd, 2009, the U.S. Trustee appointed two additional unsecured creditors who are consumer borrowers with liquidated consumer creditor claims against the Debtors to serve as members of the Creditors Committee. Beginning promptly after the retention, the Committee -- Creditor Committee's professionals engaged the Debtors and the Ad Hoc Term Loan Group in negotiations regarding modifications to the plan that would yield a return for the benefit of unsecured creditors and in doing so, resolve the Creditors' Committee's objections to the Debtors' plan and disclosure statement.

Under the careful watch of the members of the Creditors Committee, the professionals reached a settlement which we refer to as the "Committee Settlement" with the Debtors and 1 L term lenders. In broad strokes, the settlement provides that the Creditors Committee will support a plan incorporating the following terms, one, there would be a de facto substantive consolidation of the Debtors' estate solely for the purposes of creating a creditor trust for the benefit of unsecured creditors -- I'll refer to that as the "GUC," G-U-C, "Recovery Trust" -- that will make distributions to general unsecured creditors and pursue non-release causes of action contributed to the trust by the Debtors. The proceeds of such causes of action

will be split 50/50 between general unsecured creditors and 1 L term lenders.

The GUC Recovery Trust assets will be -- will also include $4 million less certain fees to be paid to the Creditors Committee advisors and certain other fees and expenses to be paid to the 2 L notes, the Trustee, and the RMBS Trustee as those terms are defined in the plan. And 1.5 percent of any net cash proceeds, as that term is defined in the plan, distributed to 1 L term lenders after a 70 percent recovery for the term lenders in the event of a sale transaction -- we'll refer to that as the "Contributed Sale Proceeds" -- 1.5 million and the pro rata share of the contributed proceeds for the 2 L notes and the elimination of the go-forward trade class from the plan. This description, of course, is qualified entirely by what is set forth in the agreement and in the amended disclosure statement.

Thus, the Creditors Committee succeeded in obtaining the promise of a distribution on account of the claims of general unsecured creditors, including the consumer creditor claims in the face as I noted earlier of a plan that is originally filed provided for no distribution on account of those claims.

Under the Committee settlement, the nondischarged borrower claims are unimpaired and not discharged in a

reorganization transaction but will be treated as general unsecured claims in a sale transaction. The Committee settlement does not mandate that the plan include language incorporating the effects of Section 363(o) of the Bankruptcy Code or otherwise provide any additional relief to consumer borrowers.

The Committee had vetted the proposed settlement and was scheduled to vote on whether to support it when the U.S. Trustee appointed the two new consumer borrower members to the Creditors Committee. The Committee delayed the vote on the Committee settlement for approximately one week to accommodate the new borrower members. During that time, the Committee attempted to renegotiate the settlement to reflect the interests of the Creditors Committee new membership, but those efforts were unsuccessful.

In an email letter to the, excuse me, email letter to the United States Trustee dated April 29, 2019, counsel to the Creditors Committee explained that after the appointment of the two consumer members, the Committee added Section 363(o) as a new condition to the near final settlement but that the proposal was rejected by the 1 L -- by the first lien lenders and the Debtors despite pushback from the Committee.

Counsel further explained that the Creditors Committee ultimately decided to give up on the Section

363(o) issue because it was focused on attempting to maximize the cash recovery for all unsecured creditors rather than focusing on one sector of the unsecured creditor body. It observed that the Section 363(o) issue was murky and that rather than pressing the point with the Debtors and the 1 L term lenders, the Creditor's Committee could leave the issue with counsel to the consumer creditors to take up at confirmation.

Counsel noted that although the Creditors Committee ultimately decided to drop the request for relief related to Section 363(o) from the Committee settlement, it agreed at the behest of its two new consumer borrower members to vote on whether to either support, not oppose, or oppose the creation of a separate consumer creditor committee. Committee counsel reported that the vote was unanimous to not oppose the creation of a consumer creditor committee.

After the U.S. Trustee appointed the new members to the Creditors Committee, the Scranton Consumers filed a letter dated April 23, 2019 requesting the formation of a separate committee of consumer creditors. In their letter, the Scranton Consumers maintain that the existing Official Committee of Unsecured Creditors even with the new additional consumer borrower members could not adequately represent Consumer Borrowers' interests. Following the

second request, the Debtors sent via email a letter date May 1, 2019 to the U.S. Trustee arguing that the appointment of a separate committee -- against the appointment of a separate Committee of Unsecured Creditors.

The Debtors argued among other things that the Consumer Creditors' interests are already adequately represented by the Creditors Committee, particularly in light of the additional Consumer Creditors added to that Committee. The Consumer Creditors have been actively participating in the Debtors' Chapter 11 cases since the petition date and in many cases through represented counsel -- have been doing so through represented counsel.

They also argued that the factors set forth in this Court's decision in Residential Capital weigh against the formation of a separate consumer creditors committee and that the cost of the Official Consumer Creditors Committee particularly at this late stage in the Chapter 11 cases could not be justified.

On May 2nd, 2019, the U.S. Trustee appointed the Official Committee of Consumer Creditors which consists of five individuals holding consumer creditor claims. The Consumer Creditors -- Consumer Committee's mandate is narrow. Proposed counsel to the Consumer Creditors Committee explained that the Committee will focus on, A, analyzing the Debtors' sale process to understand what

assets are being sold, how consumer mortgages are being packaged as part of the plan, what analysis has been done on account of consumer claims as part of the sale process, and ultimately what the sale will mean for consumer rights; and B, ensuring that the legal rights of consumers are being respected under the plan including the consumers' rights under Section 363(o) and the rights of setoff, recoupment, and defenses.

Counsel also advised that the Committee might -- will review and may ask the Court to reconsider the order that the Court entered in connection with the ordinary course of business procedures in the case as it relates to the effect on impact of the automatic stay.

On May 8, 2019, the Debtors filed a third amended plan which incorporated the Committee settlement and a disclosure statement. Prior to the hearing on the third amended disclosure statement, proposed counsel to the Consumer Creditors Committee and the Debtors were able to discuss the Consumer Creditors Committee's concerns with the plan and disclosure statement. Ultimately, the Debtors and Consumer Creditors Committee agreed that the hearing could go forward without objection on the part of the Consumer Creditors Committee because the Debtors agreed to add a new section in the disclosure statement which discusses the Consumer Creditors Committee's position regarding the

proposed treatment of consumer claims under the Debtors' plan.

The Consumer Creditors Committee has raised various issues with the headline of their position is that the proposed plan cannot be confirmed unless claims held by consumer borrowers in connection with their mortgages both against any of the Debtors and non-debtor third parties are fully preserved that may be brought against any purchaser of the Debtors' assets. With their comments incorporated, the Consumer Creditors Committee did not object to the approval of the disclosure statement. And on May 4th after a hearing on that, the Court approved the disclosure statement and the procedures -- the solicitation procedures with regard to the plan.

We'll now turn our attention to the discussion of the legal principles applicable to this motion. Section 1102 of the Bankruptcy Code governs the appointment of statutory committees in Chapter 11 cases. In part, it authorizes the United States Trustee to appoint a committee of creditors holding unsecured claims and additional committees of creditors or of equity security holders as the United States Trustee deems appropriate. See 11 U.S.C. Section 1102(a)(1).

It also provides that on the request of a party in interest, the Court may order the appointment of additional

committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. See 1102(a)(2).

However, it does not address whether the Court is empowered to disband a committee appointed by the U.S. Trustee pursuant to Section 1102(a)(1). The Debtors argue that pursuant to Sections 1102 and 105 of the Bankruptcy Code, a court may disband a committee where, one, the committee is not necessary to protect the interests of its constituency; two, the administrative expense of the committee is not justified; and three, the presence of the committee is counter productive to the process of the case. See the motion in Paragraph 15.

The U.S. Trustee and the Consumer Creditors Committee contend that the Court has no authority to dissolve a committee that has been constituted by the U.S. Trustee. In support, the U.S. Trustee asserts that Section 1102 of the Bankruptcy Code delineates specific but different powers for the Court and the U.S. Trustee and Committee members -- in Committee matters and that such language reflects Congress's desire to separate the judicial and administrative functions between the two. See the Trustee's opposition at Pages 8 to 9.

Further, the U.S. Trustee contends that Section 105(a) is not a separate source of the Court's authority

where Section 1102 provides none. And in any event, the Debtors' construction of Sections 1102 and 105 runs afoul of the Supreme Court's decision in Law vs. Siegel, 571 U.S. 415 (2014). Courts have considered whether a bankruptcy court is empowered to disband a committee appointed by the U.S. Trustee pursuant to Section 1102(a)(1) of the Bankruptcy Code have reached different conclusions.

In In re Caesars Entertaining Operating Corp., Inc., 526 B.R. 265-268 (Bankr. N.D.Ill. 2015), the bankruptcy court held that under the explicit statutory language, "Nothing in Section 1102(a) confers on the court the power to disband a committee that the U.S. Trustee has appointed under Section 1102(a)(1)." There, the U.S. Trustee appointed an official committee of second priority noteholders in addition to the official committee of general unsecured creditors.

The debtor, Caesars, moved to disband the noteholder's committee arguing that, one, an inter-creditor agreement to which each noteholder committee members is a party prevented the noteholder committees from performing many of the statutory functions; two, the noteholders are sophisticated business entities who do not need a committee to represent their interests; and three, a second committee would increase administrative costs with no corresponding benefit to the estate. The U.S. Trustee and the noteholders

committee and the Official Committee of -- and the creditors committee opposed the motion. See 526 B.R. at 267 of 268.

The court denied the motion finding that it had no authority under Section 1102(a) to disband the noteholders committee. The court -- in doing so, the court applied the statutory construction rule of "expressio unius est exclusio alterius" or the expression of one thing is the exclusion of another and reasoned that Section 1102 was explicit in enumerating the different powers of the bankruptcy court and the U.S. Trustee as to the constitution of statutory committees and the ability to dissolve a constituted statutory committee was not one of the court's enumerated powers. See 536 B.R. at 268 to 269.

The court also rejected Caesars argument that the authority to disband a statutory committee constituted by the U.S. Trustee lies within Section 105(a). That section states in part that "the court may issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. Section 105(a).

The court -- the bankruptcy court explained that Section 105(a) gives the bankruptcy courts "the power only to implement existing code provisions" and, thus, -- and is, thus, "not a vehicle for reading into Section 1102(a)(1) a power to do away with statutory committees. And Section 1102(a)(1) itself grants no such power and especially when

Section 1102(a) grants other powers but not this one." That's 526 B.R. at 269.

In doing so, the Caesars court noted the Supreme Court's view of the limits of Section 105 as set forth in Law vs. Siegel. There, the Supreme Court rejected the contention that by application of Section 105(a), a bankruptcy court can equitably surcharge an individual debtor's assets that are exempt from property of the estate under Section 522 of the Bankruptcy Code for administrative expenses in this case. In doing so, the Supreme Court noted that "its hornbook law that Section 105 does not allow bankruptcy courts to override explicit mandates of other sections of the Bankruptcy Code." 571 U.S. at 421.

The Supreme Court explained that the bankruptcy court's surcharge contravenes Section 522 of the Bankruptcy Code which entitled the Debtor to exempt $75,000 of equity in his home and that exempted amount is not liable for the payment of any administrative expenses of the estate. The Supreme Court went on to note that Section 522 is explicit in enumerating the criteria and limits for exemptions and "even assuming the bankruptcy court could have revisited the debtor's entitlement to exemptions, Section 522 does not give the court discretion to grant or withhold exemptions based on whatever considerations the deem appropriate." 571 U.S. at 424.

Other cases have questioned the bankruptcy court's power to disband an official committee appointed by the U.S. Trustee under Section 1102(a). See, for example, In Re New Life Fellowship, 202 B.R. 994 at 995 (Bankr. W.D.Okla.) where the court stated that "both the specific language in the legislative history of Section 1102(a)(1) compel the conclusion that the court is without power to abolish there it was a bondholders committee" and denying the motion because it lacked authority to grant relief. See also In Re Dewey and LeBoeuf, LLP, Number 12-12321, 2012 WL 5985325*3 (Bankr. S.D.N.Y. November 29, 2012) where the court noted that Section 1102 is silent whether the court has power to disband an additional committee after that committee has been appointed and noting that the answer as to whether or not it can be done is not so clear.

However, in In Re Pacific Avenue, 467 B.R. 868 (Bankr. W.D.N.C. 2012), the court reached the opposite conclusion in granting the motion filed by a Chapter 11 trustee to abolish the official committee of general unsecured creditors. The court found that although there was no specific provision in Section 1102 for disbanding a creditors committee, Section 105(d) gave it authority to do so in light of the particular facts and circumstances of that case. That's 467 B.R. at 870.

Section 105(d) authorizes a bankruptcy court to

hold status conferences in bankruptcy cases "to further the expeditious and economic resolution of a case." And pursuant to Section 105(d)(2), the bankruptcy court "may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically." See 11 U.S.C. Sections 105(d).

The court found that the following factors supported its determination to disband the creditors committee. One, the committee itself did not have a stake in the case but only acted as a representative for other stakeholders and, thus, where a Chapter 11 trustee was appointed, he took over the fiduciary duties of representing the unsecured creditors in lieu of a committee; two, the committee's efforts at protecting the creditor's interests are duplicative and necessary; three, while the appointment of a Chapter -- with the appointment of a Chapter 11 trustee, the debtor's plan effectively a liquidating plan, the bankruptcy is akin to a Chapter 7 where there are no creditors committee; four, the only economically disinterested party which was a bankruptcy administrator supported disbanding the committee; five, the committee's counsel is an administrative burden at the expense of the cash collateral of the secured creditor and could not be justified; and six, the efforts of the committee had not

been effective in that the progress of the case had deteriorated in large part due to the actions of the committee including, for example, the committee's redundant discovery requests.

The Debtors rely on Pacific Avenue in support of the motion. The Debtors also cite to In Re City of Detroit, Michigan, 519 B.R. 673 (Bankr. E.D.Mich. 2014) and In Re Delphi Corporation, Case Number 0544481 (Bankr. S.D.N.Y. April 23, 2019) as support for the authority to disband the consumer creditors committee. The Debtors rely on these cases is misplaced.

In In Re City of Detroit, Michigan, as the case commenced under Chapter 9 and, thus, the court's authority concerning the appointment of a statutory committee by the U.S. Trustee in Chapter 11 cases pursuant to Section 1102 was not implicated. See 519 B.R. at 677 where the court concluded that Section 1102(a)(1) was not applicable in the Chapter 9 case.

In In Re Delphi Corporation, the equity committee that the debtor sought to dissolve was appointed by the U.S. -- was not appointed by the U.S. Trustee but was appointed by the bankruptcy court under a motion by an equity holder pursuant to Section 1102(a)(2). Thus, there was never a question concerning the authority of the bankruptcy court to disband the committee formed by the U.S. Trustee. Moreover,

the bankruptcy court's order directing the appointment of an equity committee specifically reserved that court's authority to disband the equity committee upon a change of circumstances.

The Court also finds that the Debtors' reliance on Pacific Avenue is misplaced as well. One, the facts in this case and in Pacific Avenue are significantly different as there has not been an appointment of a Chapter 11 Trustee here. There's no question that the -- and what that case was seeking to do was to disband -- and there was no -- excuse me, there was no question that the Committee that they were seeking to disband in that case had been ineffectual and that is not the case. There's no evidence to that effect here.

Moreover, the Pacific Avenue court's reliance on Section 105(d) of the Bankruptcy Code as a statutory authority to disband the committee may be questioned given the recent holding in Law vs. Siegel, 571 U.S. 415. In any event, the Court finds that that case is distinguishable and is not -- and is certainly of questionable authority.

In the end of the day, though, the Court does not have to determine whether it has the authority to direct the disbandment of the consumer creditors committee because even assuming arguendo that it has such authority, the court denies the motion and concludes that the consumer creditors

committee should not be disbanded for the reasons discussed below. As an initial matter, the Debtors argue that when considering whether to overturn the U.S. Trustee's decision to appoint the Consumer Creditors Committee and order its disbandment, the Court should apply a de novo standard of review. The U.S. Trustee and Consumer Creditors Committee disagree. They contend that if at all, the Court should review the U.S. Trustee's appointment of the Consumer Creditors Committee under the arbitrary and capricious standard.

Hereto, the Court need not resolve the parties' different contentions as to the standard of review applicable to the U.S. Trustee's appointment of the Consumer Creditors Committee. As the movants, the Debtors have the burden of demonstrating grounds for disbanding the Consumer Creditors Committee. See In Re Dewey and LeBoeuf, LLP, 2002 WL 5985325*5 where the court noted that the burden should be no less rigorous to disband an additional committee appointed by the U.S.T. and the moving party -- has the moving party demonstrated that existing committee is not necessary to assure the adequate representation.

As explained below, the Debtors have failed to carry their burden under either standard of review. A decision is arbitrary and capricious if it is "based on an erroneous conclusion of law, a record devoid of evidence on

which the decisionmaker could rationally have based its decision or as otherwise patent and unreasonable, arbitrary, or fanciful." In Re Barneys, 8197 B.R. 431-439 (Bankr. S.D.N.Y. 1996) citing Heat and Controlling vs. Hester Industries, Inc., 785 F.2nd 1017 at 1022 (Fed.Cir. 1986).

In meeting this high standard, the Debtors must present substantial evidence that the U.S. Trustee acted arbitrarily and capriciously. That's Barneys 197 B.R. at 439. The evidence in the record of these cases shows that the U.S. Trustee engaged in a thoughtful and deliberative process in deciding to constitute the Consumer Creditors Committee. Prior to the appointment of that committee, the U.S. Trustee received and reviewed at least eight letters requesting the appointment of a committee, two of which requests were filed on the electronic docket in this case.

Before deciding to form the Consumer Committee, the U.S. Trustee not only considered the views expressed by the Consumer Borrowers in these letters but also considered the Debtors' response letter in opposition to such formation. Second, the U.S. Trustee did not reflexively appoint the Consumers Committee based solely on his review of the correspondence. He took other steps to address the Consumer Borrower concerns and issues before appointing a separate committee, namely he requested that the Debtors seek to extend the bar date for Consumer Borrowers to file

proofs of claims to address issues of notice and confusion by Consumer Borrowers.

Two, he added two more Consumer Borrowers to the Creditors Committee. And, three, he raised issues as to the application of Section 3630 to the sale -- to the transactions proposed under the plan. It was also only after further deliberations and input from members of the Creditors Committee and the Creditors Committee counsel as to the formation of a separation committee that he decided to empanel the Consumer Creditors Committee.

The Debtors bear the burden of demonstrating that the U.S. Trustee acted arbitrarily and capriciously in appointing the Consumers Committee. Now, the Debtors have not presented any evidence, let alone substantial evidence to that effect. At the May 14 hearing on the motion, the Debtors conceded that they're not really contending that the U.S. Trustee had acted inappropriately or was without authority or discretion in appointing the Consumer Creditors Committee. Rather, they were questioning the timing of the U.S. Trustee's decision given the posture of these cases, to wit, that the debtors, lenders, creditors committee had been on the brink of and in fact did reach the committee settlement that would move the bankruptcy proceedings towards confirmation expeditiously when the Consumer Creditors Committee was appointed.

Without more, the timing of the appointment of that committee is not grounds to upset the appointment. It's not disputed that at the outset of these cases, the U.S. Trustee had in fact considered the need for the appointment of a consumers committee, but at least initially lacked the information in the possession of the Debtors as to the identities and contacts of the Consumer Borrowers to solicit their interest in participating a statutory committee member.

Moreover, the Debtors had been aware of the requests by Consumer Borrowers for committee representation and have always been aware of the possibility of an additional committee.

Further, to the extent that the timeline in these cases has been truncated, that's been at the request of the Debtors and their lenders. All the parties in interest in this case, the creditors committee, the consumer creditors, the consumer borrowers, the U.S. Trustee, and now the Consumer Creditors Committee have acted in good faith in keeping pace with the progress of these Chapter 11 cases.

The Court finds that in light of the actions taken by the U.S. Trustee and the deliberative process that he employed in reaching his decision to appoint the Consumers Committee, U.S. Trustee did not act arbitrarily or capriciously in doing so. See, for example, In Re J&L

Funding Corp., 438 B.R. 356 at 363 (Bankr. E.D.N.Y. 2010).

The Court will now consider the de novo review standard. Under that standard, no deference is given to the determination by the U.S. Trustee to constitute the Consumer Creditors Committee. In making an independent determination of whether a separate committee should be constituted, the Court will consider the following factors and circumstances in these cases: one, the nature of the Chapter 11 cases; two, the desires of the various constituencies; three, the ability of the Consumer Borrowers to participate in these cases if a separate committee is not appointed; four, the adequate representation of Consumer Borrowers' interests by the existing creditors committee in the tasks that the Consumer Creditors Committee is being asked to perform.

These factors have been considered by courts in other contexts in determining whether a separate committee should be constituted or disbanded. See, for example, In Re Dana, 344 B.R. 35 at 38 (Bankr. S.D.N.Y.) and In Re Pacific Avenue, LLC, 467 B.R. at 870. The Court finds these factors to be helpful guidance in its analysis.

First, the Consumer Borrowers comprise of the majority in number and in value of the Debtors' unsecured creditors. Moreover, the Debtors have acknowledged that the record -- acknowledged on the record at various hearings before the Court that the Company in both its forward

mortgage business and reverse mortgage business services more than 1.5 million consumer mortgage accounts and that the Consumer Borrowers are the life blood of the Company's business.

Second, the formation of the Consumer Creditors Committee is not opposed by the Creditors Committee. The appointment of the Consumer Creditors Committee as a separate statutory committee is also strongly supported and indeed -- and has been obviously supported by the request of Consumer Borrowers.

Third, it's undisputed that as a constituent group the Consumer Borrowers are generally unsophisticated senior citizens from lower socioeconomic communities that have limited access and financial means to obtaining meaningful legal representation. See, for example, the Debtors' application to extend the bar date for Consumer Borrowers where they stated that Consumers Borrowers may be unfamiliar with the Chapter 11 process and typically are not sophisticated and not represented by counsel.

See the Lombardo 1001 declaration at Paragraphs 40 to 41 where he's describing the reverse mortgages as -- individuals obtaining reverse mortgages as being eligible only to persons of 62 years or older and also noting that the average age of the borrowers here is 75 years old. See also the Atlanta Legal Aid letter dated April 15 where the

stated that Consumers Borrowers are particularly vulnerable and at the risk of harm in these Chapter 11 cases.

Many of the Consumer Borrowers who have been arguably active in these cases are represented by non-profit organizations and/or governmental consumer agencies such as state legal aid who may themselves be unfamiliar with federal bankruptcy proceedings and lack the financial expertise and professionals to meaningful review of the economics of the Debtors' plan or I should say the terms of the Debtors' plan.

Fourth, the lack of adequate representation of the Consumer Borrowers by the existing committee clearly favors the formation of the Consumer Creditors Committee.

Finally, the scope of the mandate of the Consumer Creditors Committee and the scope of its retention -- and the scope of the retention of the proposed professionals are narrowly tailored. As discussed herein, propose counsel to the Consumer Creditors Committee has repeatedly emphasized that the Committee does not intend to replicate the work being undertaken by the Creditors Committee or to derail the progress of these Chapter 11 cases.

He advises that the Committee will focus its attention on the Consumer Borrower issues that have been previously raised in the context of the plan and disclosure statement objections including analyzing the Debtors' sale

process to understand what assets are being sold, how consumer mortgages are being packaged as part of the sale, assessing the impact of the sale on consumers rights, and ensuring that the legal rights of the consumers are being respected under the plan, including consumer rights under Section 363(o) and the rights of setoff, recoupment, and other defenses.

The Debtors argue that these Chapter 11 cases are analogous to the bankruptcy proceedings in Rosecap in which Judge Glenn denied a motion to appoint a consumer borrowers committee in a pre-packaged case of a mortgage servicer. See the motion at Paragraph 29 to 31. In that regard, the Debtors maintain that the Creditors Committee can pursue the Consumer Borrower issues including issues relating to Section 363(o) in the event of a sale transaction and/or the scope of the borrower non-discharged claims at confirmation.

Neither argument is convincing. First, there are crucial differences between Rosecap and this case. Here, the U.S. Trustee appointed the Consumer Creditors Committee unlike the court in Rosecap, which was instead considering a motion by certain consumer borrowers to appoint one pursuant to Section 1102(a)(2) and opposition thereto made by key constituencies including the creditors committee.

In addition, the consumer borrowers in Rosecap face different issues and concerns than the consumer

borrowers in this case. Among other things, the consumer borrowers in Rosecap had the benefit of a settlement entered into between the debtors and the federal government, 49 state attorney generals, and 48 banking departments which obligated the debtors to provide $200 million towards borrower relief for certain loans owned by the debtors and, two, a consent order entered into between among others the debtors and the Federal Reserve Board and the Federal Deposit Insurance Company which required the debtors to make improvements to their servicing business. See Rosecap 480 B.R at 561*2.

No such settlements or consent orders exist here for the benefit of the Consumer Borrowers. Moreover, a review of the docket in the Rosecap case reveals that the sale orders entered in that case incorporated the protections of Section 363(o). See, for example, Case Number 12-12020, the sale order, ECF Number 2246 at Paragraph 9.

Here, by contract, the Debtors' proposed plan does not contemplate that Section 363 -- the protections afforded by Section 363(o) will be available in either a sale transaction or a reorganization transaction.

Finally, the Court in Rosecap determined that based on the facts of that case, the creditors committee could adequately represent the consumer borrowers.

Here, the Court finds that that's not the case and that the Committee cannot effectively pursue the Consumer Borrowers' concerns as to Section 363(o) protections or the scope of the Debtors' discharge and release. That's because pursuant to the Committee settlement the Creditors Committee has committed to supporting the plan as currently drafted.

For all of those reasons discussed above, the Creditors Committee here cannot adequately represent the Consumers Borrowers' interests. Based upon the Court's de novo review of this matter, the Court finds that the U.S. Trustee did not err in appointing the Consumer Creditors Committee. Accordingly, the Debtors' request that the Court disband the Consumer Creditors Committee is denied.

The Court will now consider the alternative request for relief. The Debtors -- as we noted, the Debtors also seek in the alternative to limit the scope of the Consumer Creditors Committee's mandate and to cap its fees and expenses to $250,000 in the aggregate. This aspect of the motion is likewise respectfully denied. Insofar as the Debtors and the 1 L lenders and other parties have a genuine and legitimate concerns as to the Debtors' accrual of administrative and litigation expenses as a result of the Consumer Creditors Committee, those matters will be resolved through the fee application process. See, for example, In Re Dewey & LeBoeuf.

I'm satisfied that the U.S. Trustee and all interested parties will have a meaningful opportunity in the event that they believe that the fees incurred by the professionals retained by the Consumer Creditors Committee are excessive, we will hear from them. I note that just -- that the Committee's financial professionals are seeking to be retained and that the requested retention is at what they represent to be and in my experience, it seems to be a below-market compensation package.

Based upon all of the foregoing, I most respectfully deny the Debtors' motion to disband the creditors -- excuse me, the Consumer Creditors Committee and deny their request for alternative relief. The record is so ordered. Thank you all very much.

(Whereupon these proceedings were concluded at 4:46 PM)

# I N D E X

## RULINGS

| | Page | Line |
|---|---|---|
| Motion to Disband Consumer Creditors Committee Denied | 48 | 11 |

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o, ou, email=digital@veritext.com, c=US
Date: 2019.05.21 16:14:35 -04'00'

Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: May 21, 2019

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